

FILED  
**ORIGINAL**  
JUL 28 2010

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Cause No. DA-10-352

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Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

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NANSU RODDY,

Petitioner and Appellee,

v.

MICHAEL E. SPREADBURY,

Respondent and Appellant.

**PETITIONER/APPELLEE'S  
MOTION TO DISMISS  
APPEAL AND BRIEF IN  
SUPPORT**

**MOTION**

Pursuant to M. R. App. P. 4, Appellee Nansu Roddy ("Roddy") respectfully moves the Court to dismiss Appellant's appeal of a permanent Order of Protection. Appellant failed to submit timely Notice of Appeal and demonstrated no extenuating circumstances to excuse the tardiness.

Appellant was contacted prior to filing this motion. He opposes the motion.

## **BRIEF IN SUPPORT**

### **A. Background**

On November 20, 2009, the Hamilton City Court issued a Permanent Order of Protection following a full hearing with witness testimony, wherein the Appellant was represented by a public defender, cross examined the victim, and was allowed the opportunity to argue and present evidence on his behalf. The Appellant appealed to the Montana Twenty-First Judicial District Court, which affirmed the Order of Protection in a an order filed on May 20, 2010. [See Order of Protection, attached as Exhibit A.]

Because the Appellant claims the District Court's order was interlocutory, a brief description of the events giving rise to the Order of Protection and parallel criminal charges is necessary. Appellee is a senior librarian at the Bitterroot Public Library in Hamilton. Appellant repeatedly attempted to persuade Appellee and other library staff to include a particular document in the library's collection – a letter written by another Bitterroot valley resident to President Obama detailing alleged corruption by local officials. Appellant, unsuccessful but persistent in his efforts, was eventually barred from the library. Nonetheless he returned, and was charged with misdemeanor criminal trespass. While that charge was pending, Appellant approached Appellee outside the library, where he pressured her to have the charge dropped. As a result of that encounter, Appellee sought and obtained the Order of Protection, and Appellant was charged with felony intimidation. The felony intimidation charge is pending.

**B. The Notice of Appeal is Untimely**

Mont. R. App. P. 4(5)(a)(I) provides that in civil cases, the Notice of Appeal shall be filed within 30 days from the date of entry of the order from which the appeal is taken. Here, the Order was entered May 20, 2010. Appellant did not serve the Notice of Appeal until 57 days later, on July 16, 2010.

Appellant recognizes he missed the deadline, and has included a petition to allow an out-of-time appeal. Mont. R. App. P. 4(6) provides that the Supreme Court may grant an out-of-time appeal “in the infrequent harsh case and under extraordinary circumstances amounting to a gross miscarriage of justice,” which does not include “mere mistake, inadvertence, or excusable neglect.” Appellant’s petition, however, offers no evidence of extraordinary circumstances amounting to a gross miscarriage of justice. The petition provides no explanation at all for the delay.

**C. The Order of Protection is a Final judgment**

Appellant states that he considers the District Court order upholding of the Order of Protection to be interlocutory. Appellant does not offer authority for his contention. However, Appellee speculates that, because the criminal case arising from the same incident is pending, the District Court’s ruling must not be a final judgment. Appellant is mistaken.

According to Mont. R. App. P. 4(1)(b), “an interlocutory judgment is an order or decree that determines a preliminary or subordinate question or issue and which enables the court to render a final judgment, but does not finally decide the cause.” Here, the District Court’s order affirming the Order of Protection did not

answer a preliminary or subordinate question, but rather was the Court's final word on the civil proceeding. The pendency of a criminal case arising from the same encounter does not change the fact that the District Court entered final judgment on the civil matter on May 20, 2010. Though related, the cases are separate and distinct; the civil matter is not subject to change based on the outcome of the criminal matter. Indeed, the Order of Protection is granted until the year 2014, long after the criminal matter is set to conclude.

**D. Rule 54(b) Certification Was Not Sought or Granted**

Appellant alleged in the Notice of Appeal "that this appeal is an appeal from an order certified as final under Mont. R. App. P. 54(b)" (sic, presumably intended to cite Mont. R. Civ. P. 54(b)). Contrary to his claim, there is no District Court Rule 54(b) certification attached to the Notice of Appeal.

Rule 54(b) allows a District Court judge to certify for immediate appeal an interlocutory order on a claim or defense, though other claims or defendants in the case remain in the jurisdiction of the District Court. The provision is meant to make review available at the time it best serves the parties "in the infrequent harsh case" where the need for immediate review outweighs the need to avoid piecemeal litigation. *Roy v. Neibauer*, 188 Mont. 81, 84, 610 P.2d 1185, 1188 (1980). The burden is on the party seeking final certification to convince the trial court that the case is the "infrequent harsh case." *Id.*

Here, Appellant did not seek or obtain Rule 54(b) certification. Rule 54(b) certification is not required in this case because the District Court issued final judgment on May 20, 2010. There were no other claims or defendants before the

District Court in the civil matter from which the Appellant seeks to appeal; the clock started running on the deadline to file a Notice of Appeal on May 20, 2010.

**E. Pro se litigants**

This Court has held that pro se litigants, such as Appellant, may be given “a certain amount of latitude.” *Greenup v. Russell*, 2000 MT 154, ¶ 15. However, “that latitude cannot be so wide as to prejudice the other party, and it is reasonable to expect all litigants, including those acting pro se, to adhere to procedural rules.” *Id.*

Here, Appellant has demonstrated familiarity with the procedural rules through his self-representation in this and other legal matters. More importantly, it would cause considerable prejudice to Appellee to allow an appeal to go forward when the appellant has missed a critical deadline by a significant margin. When the 30-day deadline to file a Notice of Appeal passed, Appellee had every right to feel relieved – secure in the knowledge that the law would afford her a measure of protection from the Appellant for the foreseeable future. It is only fair to Appellee that Appellant be held to the same procedural rules as would any other litigant.

**Conclusion**

The appellant filed his Notice of Appeal at least 57 days after the final judgment that he is appealing, a clear and material violation of the Montana Rules of Appellate Procedure. Appellant has not demonstrated any circumstances that would explain his delay in filing the notice of appeal. Therefore, the Court should dismiss the appeal.

DATED this 27<sup>th</sup> day of July, 2010.

BOONE KARLBERG P.C.


By *Natasha P. Jones*  
Natasha Prinzing Jones  
*Attorneys for Petitioner/Appellee*  
*Nansu Roddy*

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 16 of the Montana Rules of Appellate Procedure, I certify that this motion, along with its supporting authority, is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count is 1,062 words, excluding Certificate of Service and Certificate of Compliance.

DATED this 27<sup>th</sup> day of July, 2010.

BOONE KARLBERG P.C.

By:   
Natasha Prinzing Jones  
*Attorneys for Petitioner/Appellee*  
*Nansu Roddy*

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing was duly served by U.S. Mail upon the following counsel of record at his address this 27<sup>th</sup> day of July, 2010:

Michael E. Spreadbury  
700 South Fourth Street  
Hamilton, MT 59840

BOONE KARLBERG P.C.

By Natasha P. Jones  
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*Nansu Roddy*